Supreme Court, U.S.
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No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2006

Laurence Rene', Goodman

Petitioner

v.

UNITED STATES

Respondent

On Petition for Writ of Certiorari
to the United States Court of Appeals
For the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Laurence Rene', Goodman
Petitioner Pro Se
C/o 299 Bear Drive
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Colorado, USA
303-277-1539

QUESTIONS PRESENTED

I. Whether the District Court, Tenth, First, and Eleventh Circuit Courts errored in finding the Congressional mandate of Title 26 U.S.C. § 6203 and regulations promulgated by the Secretary of the Treasury of Title 26 CFR §301.6203-1 invalid in contradiction to the decisions of the Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuit Courts.

II. Whether the judicial proceedings of the District Court sanctioned by the Tenth Circuit Court have decided federal questions in a way that appears to conflict with applicable decisions of this Court and have so far departed from the accepted and usual course of judicial proceedings as to call of an exercise of this Court's power of supervision.

III. Whether the decisions of the District Court, Tenth, First, and Eleventh Circuit Courts have decided an important issue involving the administration of income tax laws, finding the Congressional mandate of Title 5 U.S.C. § 706 invalid, in a way that appears to conflict with this Court's prior holdings.

PARTIES TO THE PROCEEDING

Laurence Rene', Goodman, hereinafter "Petitioner" is the party injured bringing this suit in my proper person without the aid of licensed counsel, and all the actions happened to the party injured within the venue and jurisdiction of this court.

Susan Meredith is an internal revenue service employee and was the original Respondent in the district court. On a motion from Respondent's attorney the district court ordered to substitute the United States for Susan Meredith as Respondent party despite established to the contrary, and in opposition to the intent of the mandamus statute. The Petitioner filed a Motion and Memorandum is opposition to Respondent's Motion to alter/amend caption to substitute the United States for Susan Meredith as the Respondent.

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No. _____ _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2006

Laurence Rene', Goodman

Petitioner

v.

UNITED STATES

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner Laurence Rene', Goodman respectfully prays that a writ of certiorari issue to review the order of the en banc United States Court of Appeals for the Tenth Circuit, entered on August 14, 2006, which affirmed, the order of the United States District Court for the District of Colorado entered on July, 28 2005 dismissing Petitioner's petition for a writ of mandamus.

OPINIONS BELOW

The opinion of the en banc United States Court of Appeals for the Tenth Circuit is not yet officially reported. The opinion of the original Panel of the Tenth Circuit is not officially reported. The opinion of the United States District Court for the District of Colorado is not officially reported. These opinions are attached in the Appendix.

JURISDICTION

The final order of the Tenth Circuit Court of Appeals was entered on August 14, 2006. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. 1254(1)

CONSTITUTIONAL, STATUTORY PROVISIONS, AND REGULATIONS INVOLVED

31 CFR Part 1, § 2 Appendix B of Subpart C

Individuals are advised that Internal Revenue Service procedures permit the examination of tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the Internal Revenue Service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the Privacy Act. (Emphasis added)

26 CFR § 301.6203-1 (2004) Method of assessment.

The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount

shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of the assessment, the character of the liability assessed, the taxable period if applicable, and the amounts assessed.

26 U.S.C. § 2603 (2002) Method of assessment

"The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules of regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment."

U.S. Const. art. I § 8 The Congress shall have power

"To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;"

U.S. Const. amend. V provides inter alia that:

"[No person] shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . ."

5 U.S.C. § 706. (1996). Scope of review

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

> "**(1)** compel agency action unlawfully withheld or unreasonably delayed; and
>
> "**(2)** hold unlawful and set aside agency action, findings, and conclusions found to be—
>
> > "**(A)** arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"**(B)** contrary to constitutional right, power, privilege, or immunity;

"**(C)** in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

"**(D)** without observance of procedure required by law;

"**(E)** unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

"**(F)** unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

"In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

STATEMENT OF THE CASE

This case arises from the refusal of the initial Respondent, Susan Meredith, to produce information contained in record of assessments as required by law when requested. Susan Meredith is an internal revenue service employee who Petitioner alleges has collected and is continuing to collect an unknown tax without a valid assessment. When Petitioner requested a copy of the Record of Assessment, or in the alternative to provide a Form 3050 "Certificate of Lack of Records," Respondent utterly refused to comply with the request. Respondent has consistently maintained that she does not have to produce information related to her collection activity despite established laws. Thereafter, on June 7, 2004 Petitioner filed in the United States District Court for the district of Colorado a petition in the nature of a mandamus, commanding Respondent to perform a non-discretionary ministerial duty to produce a valid record of assessment. Implementing regulations at 26 CFR § 301.6203-1(2004) as written by Congress denotes five elements of a summary record of assessment that must be disclosed to the requester;

1) Identification of the taxpayer.
2) Character of the liability assessed.
3) Taxable period.

4) Amount of the assessment.
5) Must be signed by an assessment officer.

Petitioner requested a copy of the record of assessment before initiating suit and specifically requested the character of the liability within the suit (See Petition ¶10(b)). The Respondent advanced the position without any bases in law that the Petitioner was required to specify the "ty e of tax" before the record of assessment could be disclosed (See DE#12 ¶2). The magistrate's recommendation reiterates the same position that somehow the Petitioner is obligated to specify the "type of tax" in the request for the assessment certificate (See Order DE # 58 ¶2 footnote 1). Later in the order, without any bases in law or fact and without the benefit of an evidentiary hearing, the magistrate flip flopped his position and held that the "the character of the liability assessed" was disclosed in the form 4340 (See Order DE #58 ¶5). Petitioner raised an objection to the magistrate's lack of understanding of the requirements of an assessment (See DE #68 and 69), however the objection was ignored.

A cursory examination of Form 4340 indicates a column to be used for the type of tax, however it does not disclose the type of tax that Respondent was attempting to collect, but listed instead "1040A." Petitioner is unaware of any legal authority that would list 1040A as a type of tax. A comparison of the older assessment certificate Form 23C indicates the class of tax related to the character of the liability. Form 23C lists the class's of tax as:

1) Withheld individual income and FICA
2) Individual income-other
3) Corporation income and excess profits
4) Excise
5) Estate and gift
6) Tax on carriers and their employees
7) Federal unemployment tax act

1040A is not listed as a class of tax on Form 23C, nor is 1040A listed as a class of tax anywhere in the Internal Revenue Code or implementing regulations. 1040A may be a type of tax form but never is it listed as a type of tax. Petitioner is entitled to know the class of tax the Respondent is attempting to collect

because without such knowledge the Petitioner cannot raise a legal objection to the asserted source of the erroneous tax collection. Reference to a particular tax form does not indicate the nature, kind, or source of the tax being imposed or assessed. The Petitioner is not required to presume, guess, or assume the type of tax being applied or that the tax is being properly applied.

There is no principle tax amount listed on the Form 4340, and the Respondent has failed to provide a supporting list or record. It is imperative that the penalty and interest assessments be tied back to the principle tax. In this case, Form 4340 fails to disclose the principle tax and the amount, making it impossible to calculate the appropriate interest and penalties.

Form 4340 sent by the Respondent is not signed by an assessment officer. Instead, Form 4340 is signed by a certifying officer. Delegation order 198 issued by the secretary of the treasury only allows certifying officer to certify that Form 4340 is a representation of the official record. The Petitioner alleges that the document supplied by the Respondent is not signed by an assessment officer, because it does not comply with the regulations imposed by the secretary of the treasury, and therefore it is not the actual assessment that the Petitioner has requested. The Petitioner cannot contest the lack of a signature on an assessment that is being hidden from him. Since the statutes mandate a written signature, whether the form signed is hand written or machine derived, there must be an official signature. The requirement of a signature implies that a hard copy of the document must exist, and the statutes further specify that a copy is available to the requester upon demand.

What is apparent is that no one seems to know just what an assessment really is. The Respondent did not know, the Internal Revenue Service has no idea, and the Department of Justice is totally clueless. After the Respondent was notified that Form 4340 was not an assessment the Respondent flip-flopped and produced a document titled RAC-006 (See DE #25 footnote 1) and stated that this was the assessment. Petitioner complained of this deficiency (See DE #26, 27and 28) but such complaint fell on deaf ears.

A cursory examination of the RACS 006 does not list the name of a taxpayer, nor does it show any nexus to the Petitioner or Form 4340. RACS 006 is constructed solely through the use of

statistical information on unrelated taxpayers. Neither the District Court, nor the Department of Justice has any delegated authority to state for a fact that the two are supporting lists or records. To do so would be a void assertion and cannot dispose of this case, see *U.S. v. Lovasco*, 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752.

Combining Form 4340 and RACS 006 together, assuming arguendo that there was a nexus, still fail to be a valid assessment as it applies to the Petitioner. Neither form 4340 nor RACS 006 combined show a taxable revenue activity or character of liability that pertains to the Petitioner. The character of the tax liability will disclose an identifiably activity involving customs, duties or excises. U.S. Const. art. I § 8 allows three types of taxes, income is the bases for determining the amount of the tax attributable to the activity. Petitioner is unaware of the type of activity i.e. customs, duties, or excises the Internal Revenue Service is attempting to collect that would create a liability. Reference to "income" or a "tax return" by itself does not establish the character of the liability. Congress has specified the nature of income tax:

> "The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax; it is the basis for determining the amount of the tax." *House Congressional Record*, 3-27-43, page 2580

The RAC 006 supplied by the Respondent is definitely an assessment. However, the RAC 006 is neither relevant nor admissible in this case because it lacks the foundation and authentication necessary to be admitted as evidence that would establish a nexus to the Petitioner. Pursuant to Fed.R.Evid Rule 901(a) and (b)(1) no testimony has been offered from a competent witness as to the identification or authentication of RAC 006. The submission of RAC 006 has not been stipulated to by the Respondent, and statements of counsel in brief or in argument are not sufficient for motion to dismiss, *United States v. Lovasco* 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977)

The Petitioner alleges that the original Respondent has attempted to subterfuge the assessment requirements by quoting

the case *March v. IRS,* 335 F.3d 1186 (10th Cir. 2003). The *March* case can be distinguished here because the Form 4340 reviewed by the Tenth Circuit is not evidence before the court for comparison. The name, title, or heading of a document does not establish an assessment, only the statutory and regulatory requirements that articulate the contents of a document should determine whether an assessment has been made. In this case the requirements of an assessment have not been made.

The Petitioner alleges that the Respondent has a duty to disclose a procedurally correct assessment. The secretary has not changed the regulations from the time the 23C was considered a valid assessment till the present time. The Petitioner further alleges Respondent is relying on secret law to provide a substitute, abbreviated, and incomplete assessment, since no statutory authority was conferred per 26 USC § 6203 and 26 CFR § 301.6203-1 (2004) to provide a substitute certificate, abbreviated, or incomplete assessment. The court quoted "secret law is an abomination," in *Hawkws v. IRS,* 467 F.2d 787 (1972). Case law further established that purpose of requiring disclosure of "policies, statements or interpretations of law...is to prevent bodies of 'secret law' from being built up," *Schwartz v. IRS,* 511 F.2d 1303, 1305 (D.C. Cir. 1975).

RREASONS FOR GRANTING THE PETITION

I. The Petitioner alleges the District Court, Tenth, First, and Eleventh Circuit Courts errored in finding the Congressional mandate of Title 26 U.S.C. § 6203 and regulations promulgated by the Secretary of the Treasury of Title 26 CFR §301.6203-1 invalid in contradiction to the decisions of the Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuit Courts.

Congress recognized the importance of procedurally correct summary record of assessment for the collection of specific types of tax. As a bulwark against tyranny by the Internal Revenue Service the provisions of Title 26 U.S.C. § 6203 and Title 26 CFR §301.6203-1 established five specific elements necessary for a valid summary record of assessment. To determine the first

question presented and resolve the widespread conflict among the circuits on this important question it is necessary to determine if summary record of assessment presented in this case is consistent with congressional intent and regulations promulgated by the Secretary of the Treasury.

A. Conflicts between the Courts of Appeal.

The cases of *March v. IRS*, 335 F.3d 1186 (10th Cir. 2003) and *Roberts v. Comm. of IRS*, 329 F.3d 1224 (11th Cir. 2003) cited by the Respondent as correct, appears to conflict with the following cases from other United States Court of Appeals;

In *Robinson v. United States*, 920 F.2d 1157, 1158 (3rd Cir.1990), the court described the assessment process as:

> "A duly designated official for the district or regional tax center signs the summary record of the assessment, which identifies the taxpayers, the type of tax owed, the taxable period and the amount of the assessment. 26 U.S.C. § 6203; Treas. Reg. § 301.6203-1."

In *Stallard v. U.S.*, 12 F.3d 489, 493 (5th Cir.1994) the court reaffirmed Brafman stating;

> "We held in Brafman that the "assessment certificate" must be timely signed by the appropriate official; but the certificate we were referring to in that opinion was the summary record of assessment named in § 301.6203-1. That holding is consistent with § 301.6203-1, which provides that "the assessment shall be made by an assessment officer signing the "*summary record*" and "[t]he date of assessment is the date the *summary record* is signed by an assessment officer."

In *Gentry v. U.S.*, 962 F.2d 555, 558 (6th Cir. 1992) the court held;

> "The Treasury Regulations specify that the taxpayer is entitled to a copy of the pertinent parts of the assessment

> documents. Those pertinent parts need only provide the five items listed in the Regualations. See 26 C.F.R. § 301.6203-1 (requiring the taxpayer's name, date of assessment, character of liability, tax period if applicable, and amounts assessed). * * * [S]ignature of assessment officer on summary record is required to validate that form and to verify that the assessments were correctly made, based upon original supporting documents."

In *Planned Investments, Inc. v. United States,* 881 F.2d 340, 343 (6th Cir. 1989), the court examined the requirements of 26 C.F.R., §301.6203-1, and stated:

> "Section 6203 of Subchapter A provides that assessment be made by recording the liability in accordance with the regulations promulgated by the Secretary. 26 U.S.C. § 6203 ... Treasury regulations provide that the assessment be made by signing the summary record of assessment. 26 CFR § 301.6203-1. The summary record, through supporting documents, must contain the following:
>
> 1) identification of the taxpayer;
> 2) character of liability assessed;
> 3) taxable period, if applicable; and
> 4) amount of assessment

In *United States v. Miller*, 318 F.2d 637, 638-39 (7th Cir. 1963);

> "We think it clear that the term "assessment" referred to in this section of the Internal Revenue Code of 1954 has a technical meaning spelled out in the Code and that meaning is binding on this court."[2]

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[2] 26 U.S.C. 1958 ed. § 6203 reads in part:

§ 6203. Method of assessment

"The assessment shall be made *by recording the liability of the taxpayer in the office of the Secretary of his delegate in accordance with rules or regulations prescribed the Secretary or his delegate* in accordance with rules or regulations prescribed by the Secretary or his delegate. * * * " (Emphasis supplied.)

In *Essex v. Vinal,* 499 F2d. 226, 230 (8th Cir. 1974) the Court reaffirmed Treasury Regulation § 301.6203-1 the court stated;

> "[t]hese assessments made were void because Treas. Reg. § 301.6203.1 (1961) was not complied with. Int.Rev.Code of 1954, § 6302 specifies that an assessment shall be made by recording the liability of the taxpayer in the office of the Secretary of his delegate in accordance with rules or regulations prescribed the Secretary or his delegate.
>
> Treasury Regulation § 301.6203-1, provides in pertinent part: *Method of Assessment.* - The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. *The assessment shall be made by an assessment officer signing the summary record of assessment.*" (Emphasis supplied.)

In *Brafman v. United States*, 384 F.2d 863, 865-866 (9th Cir.1967) the court reaffirmed Treas. Reg. § 301.6203 the court stated;

> "Since the certificate lacks the requisite signature, it cannot constitute a valid assessment."

In the published opinions of *Arford v. U.S.*, 934 F.2d 229, 232, (9th Cir. 1991) and *Koff v. U.S.*, 3 F.3d 1297, 1300, (9th Cir. 1992) the courts stated;

> "Section 6203 provides (1) that assessments must be made in accordance with rules and regulations prescribed by the

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Treasury Regulation § 301.6203-1, as amended, T.D. 6585, 1962-1 , Cum.Bull 290, reads in part:

"Sec. 301.6203-1 Method of Assessment.

"The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. * * * *The date of the assessment is the date the summary record is signed by an assessment officer.* * * *" (Emphasis supplied.)

> Secretary, and (2) that "a copy of the record of the assessment must be given the taxpayer upon request."

In *United States v. Coson,* 286 F.2d 453, 465 (9th Cir. 1961) the circuit court upheld the district court's decision stating that;

> "it would appear that the trial court was right in holding the assessment insufficient for failure to comply with the statutory requirements."

B. Conflicts relating to Form 4340 within Courts of Appeal.

The following cases show the lack of understanding and consensus as to the function and statutory requirements relating to the Form 4340 "Certificate of Assessments and Payments":

The decision of *United States v. Chila,* 871 F.2d 1015, 1017-18 (11th Cir.1989) is distinguished in that the decision appears to conflicting with the law and regulation stating;

> "The requirement by the regulation that the government provide "the pertinent parts of the assessment" is satisfied by providing any part of the records of the government that supplies the "pertinent information" that both regulation and statute require."

Contradict their own decision the Court further stated;

> "Accordingly, this Court accepts the document "Certificate of Assessments and Payments" submitted by the government as presumptive proof of a valid assessment."

The decision of *Geiselman v. United States,* 961 F.2d 1, 5-6 (1st Cir.1992) appears to contradict law and regulation is similarly distinguished, in citing from *Rocovich*;

> "Under 26 U.S.C. § 6203, an assessment is made "by recording the liability of the taxpayer in the office of the Secretary." In practice, the IRS makes assessments by

> having an assessment officer fill out and sign a "summary record of assessment," also known as a Form 23C. In this case the government did not provide the district court with an actual Form 23C, but it did submit several Certificates of Assessments and Payments (Form 4340) which listed the "23C date" (the date the assessment officer signed the Form 23C) for the initial assessments made against Michael for each tax year in which he failed to file a return, and for each subsequent assessment of interest on the underlying tax liability." * * * * "Certificates of Assessments and Payments are "routinely used to prove that tax assessment has in fact been made." *Rocovich v. United States*, 933 F.2d 991, 994 (Fed, Cir. 1991). They are "presumptive proof of a valid assessment"

In *United States v. Miller*, 318 F.2d 637, 638-39 (7th Cir. 1963);

> "The district court properly considered the copy of the official copy of the official Certificate of Assessments and Payments submitted by the Government in ruling on the motion for summary judgment."

In the preceding cases *Chila, Geiselman, Rocovich, and Miller,* supra, it appears that nothing in the record established if the five specific elements pursuant to 26 CFR § 301.6203-1 necessary for a valid summary record of assessment were present. There appears that no discussion presented with regard to the supporting documentation of the Certificate of Assessments and Payments. Where, as here, supporting documentation for a party's position does not exist, there must be a point at which "presumption" can no longer be relied upon to sanction Respondent's arbitrary and abusive denial of the procedural due process rights conferred upon taxpayers by Congress. If Respondent merely has to generate a "Certificate of Assessments and Payments" to carry its burden and is not required to follow the congressional mandates of the applicable statutes, the potential for abuse becomes unlimited.

In the context of a presumption of correctness as to the amount of assessment, several federal courts have identified the

general rule that the presumption does not arise unless it is supported by some evidentiary foundation. *Weimerskirsh v. Commissioner,* 596 F.2d 358, 361 (9th Cir. 1979); *Carson v. U.S.* 560 F.2d 693, 696-97 (5th Cir. 1977); *Coleman v. U.S.,* 704 F.2d 326 (6th Cir. 1983); and *U.S. v. Lochamy*, 724 F.2d 494, 498 (5th Cir. 1984).

The inherent unreliability of the Certificate of Assessments and Payments as it relates to assessments was addressed in *Huff v. United States*, 10 F.3d 1440, 1445-46 (9th Cir. 1993);

> "Generally, courts have held that IRS Form 4340 provides at least presumptive evidence that a tax has been validly assessed under § 6203. See *Farr,* F.2d at 454; *Geiselman v. United States,* 961F.2d F. 1, 5-6 (1st Cir.), cert denied, - U.S.- , 113 S.Ct. 261, 121 L.Ed.2d 191 (1992); *Rocovich v. United States,* 933 F.2d 991, 994 (Fed. Cir. 1991) ("Certificates of Assessments and Payments [are] routinely used to prove that a tax assessment has in fact been made."); *United States v. Chila,* 871 F.2d 1015, 1017-18 (11th Cir.1989), cert denied, 493 U.S. 975, 110 S.Ct. 498, 107 L.Ed.2d 637, 638-39 (1989) *United States v. Miller*, 318 F.2d 637, 638-39, (7th Cir. 1963). Here, however, the IRS seeks to rely solely on these forms to prove not only that an assessment had been validly made, but that the taxpayer had been provided with a copy of the assessment as per *Treasury Regulation § 301.6203-1.* ***We are unaware of any authority indicating that these forms standing alone constitute evidence for the latter proposition. Indeed, no entry on the form contains any information in this regard.***" (Emphasis added)

In *Stallard v. U.S.*, 12 F.3d 489, 493 (5th Cir.1994) the court appears to have identified the Form 4340 as merely a support document and all provisions must be met stating;

> "If the summary record is properly supported through a Form 4340, the assessment contained in that summary record is considered presumptively valid; the taxpayer

> must produce evidence to the contrary to rebut this presumption." * * * * "The district court concluded that our opinion is Brafman v. United States requires that *all* provisions of Treasury Regulation § 301.6203-1 must be met within the limitation period."

Referring particularly to the language of the court's opinion in *Portillo v. C.I.R.*, 988 F.2d 27, 29 (5th Cir. 1993);

> "[*U*]*nited States v. Janis* 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976). Janis holds that where "the assessment is shown to be naked and without any foundation," it is not entitled to the presumption of correctness ordinarily conferred upon a notice of tax deficiency. The inception of this holding is found in *Helvering v. Taylor,* 293 U.S. 507, 55 S.Ct. 287, 79 L.Ed. 623, a case which was decided in 1935!"

A split exists in the Circuit Courts with respect to the issue of whether the Congressional mandate of 26 U.S.C. § 6203 and regulations promulgated by the Secretary of the Treasury Title 26 CFR § 301.6203-1 are valid. This leaves profound confusion for future interpretation on this issue by any Federal Court.

It has been well established in this Court that Certiorari should be granted where there is a clash of opinions between Courts of Appeals preventing a uniform course of decision made on the same question. *Universal Camera Corp. v. NLRB,* 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456 (1951); *Rice v. Sioux City Memorial Park Cemetery Co., Inc.,* 349 U.S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955); *Goldlawr, Inc v. Heiman,* 369 U.S. 463, 82 S. Ct. 913, 8 L. Ed. 2d 39 (1962).

Sup. Ct. R. 10(a) indicates that among the reasons the Court considers in granting a writ of certiorari is when a United States Court of Appeals has entered a decision in conflict with decisions of another United States Court of Appeals on the same important matter.

The conflict that now exists between the Tenth, First, and Eleventh Circuit Courts and the Third, Fifth, Sixth, Seventh,

Eighth, and Ninth Circuit Courts creates a situation that calls for this Court to resolve the conflict. The administration of income taxes is of public importance in order that there would be uniform application nationwide of 26 U.S.C. § 6203 and 26 CFR § 301.6203-1. Without such clarification and uniformity, thousands of people occupying several circuits, as well as people nationwide, are subjected to the arbitrary application of unsigned and unverified computer generated assessment forms. Creating a liability where none exists, collecting money, and confiscating property without due process from the public at large by such means creates a serious abuse of power that a bureaucracy might generate. It is therefore respectfully requested that this Court grant the Petition for Writ of Certiorari to resolve the conflict between Courts of Appeal.

II. The Petitioner alleges the judicial proceedings of the District Court sanctioned by the Tenth Circuit Court have decided federal questions in a way that appears to conflict with applicable decisions of this Court and have so far departed from the accepted and usual course of judicial proceedings as to call of an exercise of this Court's power of supervision.

The second question presented addresses the issue of the lower court exceeding the proper scope of judicial review by substituting its judgment concerning the application of the statutory standard of conduct and the framing relief appropriate for that of the agency charged with the administration of the summary record of assessment. The United States District Court's actions sanctioned by the Tenth Circuit Court conflicts with this Court's authority appears to demonstrate a "departure" from "the usual course of judicial proceedings," but so too does disregard of the requirements of the Federal Judicial Code, or the Federal Rules of Civil Procedure, or Evidence which potentially warrant an exercise of the Court's "supervisory power,"

A. Judicial proceedings appears to conflict with this Court's prior holdings in *Hawaii v. Gordon*, *Land v. Dollar*, *Dugan v. Rank*, *Larson v. Domestic, Foreign Commerce Corp.*, *Washington Legal Found. v. U. S. Sentencing Comm'n*, and

***North Carolina v. Temple* stating that the United States was not the proper party.**

The Petitioner alleges that the Federal District Courts have a duty to act within the mandates defined by United States Statute conferring their power. The District Court's order to substitute the United States for Susan Meredith, as the party Respondent was erroneous and goes against the plain meaning of the mandamus statute. The Petitioner filed a Motion and Memorandum in opposition to Respondent's Motion to alter/amend caption, but said motion fell on deaf ears.

The Respondent argues that the United States has not waived sovereign immunity unless a statutory waiver can identify this action, and that the case should be dismissed for lack of subject matter jurisdiction (See DE #12). In determining the scope of immunity, the trial court must look at the relief sought and not just the caption of the parties. *Larson v. Domestic and Foreign Commerce Corp.*, infra. 337 U.S. 682 (1947). This Court has issued not less than six instances where sovereign immunity could be waived in specific narrow instances based upon relief sought and where there is no statutory waiver.

In determining whether the sovereign is a dispensable party the court must first reason if the relief sought would operate against the sovereign. If the relief sought were not adverse to the sovereign, then the sovereign would not be a proper party. *Hawaii v. Gordon*, 373 U.S. 57 (1963). Similarly, if any judgment prayed for would not expend itself on the public treasury or domain, or interfere with the public administration of the sovereign, the sovereign would not be a proper party. *Land v. Dollar*, 330 U.S. 731 (1947). See also: *Dugan v. Rank*, 372 U.S. 609 (1963). There is another waiver of sovereign immunity under the theory of ultra vires, which does not require a statutory waiver. In *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682 (1947), the Supreme Court held that:

> "[A] government officer in his official capacity was not a suit against the sovereign, and hence not subject to defeat by the doctrine of sovereign immunity, only if (1) the officer's powers are limited by statute and his actions were

> ultra vires, or (2) the officer was acting unconstitutionally or pursuant to an unconstitutional grant of power from the sovereign."

Both the *Larson* and *Dugan* cases are collectively known as the Larson – Dugan exception to sovereign immunity. In a 1996 decision, then Circuit Judge Ginsburg invoked the Larson – Dugan exception in *Washington Legal Found. v. United States Sentencing Comm'n*, 89 F.3d 897 (DC Cir. 1996) stating that: "If a plaintiff seeks a writ of mandamus to force a public official to perform a duty imposed upon him in his official capacity ... no separate waiver of sovereign immunity is needed." Id at 901. The original Respondent, Susan Meredith, lacks the power to deny the production of an assessment, and the refusal to produce is in contempt of Congress and Secretary of the Treasury's regulations. The Petitioner relies on *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1234 (10th Cir. 2005):

> "The district court also had jurisdiction under 28 U.S.C. § 1361, which provides: The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."
>
> "Mandamus is the traditional writ designed to compel government officers to perform nondiscretionary duties. *See Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 168-69, 2 L.Ed. 60 (1803). Significantly, application of the mandamus remedy to require a public official to perform a duty imposed upon him in his official capacity is not limited by sovereign immunity. In *Houston v. Onnes,* the Court held that suits to compel federal officers " 'to perform some ministerial duty imposed upon them by law, and which they wrongfully neglect or refuse to perform ... would not be deemed suits against the United States within the rule that the Government cannot be sued except by its consent.' " 252 U.S. 469, 472-73, 40 S.Ct. 369, 64 L.Ed. 667 (1920) (quoting *Minnesota v. Hitchcock,* 185 U.S. 373, 386, 22 S.Ct. 650, 46 L.Ed. 954 (1902)); *see also,*

> *e.g., Roberts v. United States ex rel. Valentine,* 176 U.S. 221, 20 S.Ct. 376, 44 L.Ed. 443 (1900) (granting mandamus against the United States Treasurer); *Washington Legal Foundation v. U.S. Sentencing Comrn,'n,* 89 F.3d 897, 901 (D.C.Cir.1996)." (*emphasis added*)

The ultra vires exception to sovereign immunity was articulated in the Ninth circuit in *Washington v. Udall*, 417 F.2d 1310 (9th Cir. 1969). In *Udall*, the State of Washington sought relief on the failure of federal officials to perform their actions based on statutory requirements. The *Udall* court held that the doctrine of sovereign immunity does not preclude all suits, based on unconstitutional or ultra vires acts of federal officials, for affirmative relief or for the disposition of property of the United States. Only when the relief sought places an intolerable burden on governmental functions, the doctrine of sovereign immunity applies.

Federal Tax Court has affirmed Udall in *Gealer, ET AL. v. U.S., ET AL.*, 82 AFTR 2d 98-5669, 98-5677 (1998):

> "7. The Ultra Vires Exception
> Petitioner next claims that sovereign immunity is waived under the doctrine of ultra vires. The Ninth Circuit in *Washington v. Udall* observed that certain suits against a government officer acting in an official capacity were not "suits against the sovereign ... only if (1) the officer's powers are limited by statute and his actions were ultra vires, or (2) the officer was acting unconstitutionally or pursuant to an unconstitutional grant of power from the sovereign." *Udall*, 417 F.2d at 1314; cf. *Westside Property Owners v. Schlesinger,* 597 F.2d 1214, 1219 (9th Cir. 1979) (noting a limitation on the ultra vires exception, namely that the doctrine of sovereign immunity "may be controlling in some suits ...where the relief sought would work an intolerable burden on government functions, outweighing any consideration of private harm") (citation omitted)."

This Court also added one of two express exceptions to the ultra vires waiver of sovereign immunity: "if the relief requested can not be granted by merely ordering the cessation of the conduct complained of but will require affirmative action by the sovereign or the disposition of unquestionable sovereign property then the suit may fail." *North Carolina v. Temple*, 134 U.S. 22 (1890).

This Court in *Larson*, supra, articulated a question similar to the facts in the present case. "[If the] suit is not one for damages but for specific relief: i.e., ...injunction directing the defendant officer's actions. In each such case the question is directly posed as to whether, by obtaining relief against the officer, relief will not, in effect, be obtained against the sovereign." Id at 688. The United States as the sovereign in this case is not burdened by the relief sought, but actually demands the Respondent comply by both Congressional mandates of Title 26 U.S.C. § 6203 and regulations promulgated by the Secretary of the Treasury of Title 26 CFR § 301.6203-1.

In this case, Congress and the Secretary of the Treasury have imposed a mandatory, and non-discretionary duty on the Respondent to provide specific documents upon request. This request is not an intolerable burden on the sovereign, because the sovereign has already mandated that the Respondent must comply with a request for assessment certificates, or the related documents. A judgment issued by the lower court would not have expended itself on the public treasury, or public domain of the United States, because the Petitioner has not claimed any damages that would require a statutory waiver. *Clark v. United States*, 691 F.2d 837 (7th Cir. 1982) supra. Moreover, any relief sought will not in any way interfere with public administration, or any government functions of the United States.

Under the ultra vires waiver of sovereign immunity, the Respondent is a revenue employee. Respondent's authority, pursuant to Title 31 CFR Part 1, §2 Appendix B of Subpart C does not allow the Respondent to forbid the Petitioner the right to a copy of the assessment certificates or related documents. "[An] officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. His actions are ultra vires his authority

and therefore may be made the object of specific relief." *Larson*, supra. Id at 689.

The two exceptions to the ultra vires waiver do not apply to this case. A judgment will not require an affirmative action by the sovereign nor does this action involve the disposition of property. As articulated in the petition, Congress has allowed access to information from the employee that is seeking collection of assumed tax liabilities pursuant to 31 CFR Part 1, § 2 Appendix B of Subpart C.

In compliance with 31 CFR Part 1, §2 Appendix B of Subpart C Petitioner sought proof of claim i.e. Record of Assessments from the individual effecting the collection of tax liabilities, which in this case is the Respondent. The mandamus statute clearly states that the mandamus directs an officer or employee of the United States, or an agency thereof to perform a duty owed to a plaintiff. Although the United States of America is an agency of the United States it lacks the Sovereign Immunity that the United States can claim. Moreover, by substituting an agency in place of an employee the sovereign immunity issue of the United States is moot.

Respondent's frivolous argument that there must be an expressed statutory waiver of sovereign immunity by quoting authorities where parties sought claims against the sovereign is a blatant attempt to shift focus from the content of the allegations. Respondent's actions are in contempt of Congress and insubordination to the Secretary of the Treasury. The United States as a sovereign is not a proper party to the action, because the Respondent is confusing its supporting cases with the assumption that the United States with its agency the United States.

B. Judicial proceedings appears to conflict with this Court's prior holdings in *Adicks v. S.H. Kress Co.*, and *U.S. v. Lovasco, Gonzales v. Buist, Holt v. United States, Telephone Cases,* and failing to show as matter of law the entitlement to summary judgment disposition beyond a reasonable doubt.

The Petitioner alleges that by virtue of the magistrate's position and oath of office, magistrates and judges owe a duty to get just results. The Petitioner alleges that the magistrate's

recommendation on the subject of the summary judgment issue was nothing more than quoted court cases regarding burden of proof. Nothing in the recommendation ties the listed court cases to the facts in the case. The law on summary judgment is well settled, a summary judgment may not be granted when a genuine issue of material fact is presented to the trial court, *Adicks v. S.H. Kress Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). As a matter of law the movant must show entitlement to summary judgment disposition beyond a reasonable doubt, *Norton v. Liddel*, 620 F. 2d 1375, 1381 (10th Cir. 1980). The main premise for Respondent's motion to dismiss is on the assumption that Form 4340 contains all the elements that the regulations require to be disclosed per 26 C.F.R. § 301.6203-1.

The Petitioner alleges that there is a triable issue of fact here as to whether the Secretary's mandates have been followed. There are no presumptions that the Petitioner has to rebut per Fed.R.Evid. Rule 301. The documents and information the Respondent is required to produce are not in the record, nor have they ever been produced – period. The burden of persuasion rests on the Respondent to prove by evidence that all of the requirements have been met, Respondent has failed to prove as a matter of law they are entitled to summary judgment or dismissal.

Three issues of the assessment have been withheld from the Petitioner, the principal tax amount, the character of the liability, and a copy of the assessment signed by an assessment officer establishing the date of the assessment. One of the requirements for summary judgment is a bona fide affidavit from the Respondent in the case per Fed. R. Civ. Pro. Rule 56(e). The magistrates stated that counsel had provided an affidavit that satisfied the summary judgment requirement (See DE #58 pg.2). Petitioner contends that the counsel for the Respondent is not a party to the case and her affidavit is not evidence before the court that satisfy the summary judgment requirement. The Petitioner relies on *United States v. Lovasco* 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977); *Gonzales v. Buist*, 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463 (1912); *Holt v. United States*, 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2 (1910); see also; *Telephone Cases*, 126 U.S. 1, 31 L. Ed. 863, 8 S. Ct. 778 for this contingent.

C. Judicial proceedings appears to conflict with this Court's prior holdings in *Lynch v. Household Finance Corp.*, *Matthews v. Eldridge*, and *Arnstrong v. Monzo*, denying the Petitioner 5th amendment due process of an evidentiary hearing

The Petitioner alleges that by virtue of the magistrate's position and oath of office, magistrates and judges owe a duty to act within the limitations of the Constitution of the United States and to perform their undertaking with the ordinary care and competence reasonably expected of members of their profession in the community.

The Petitioner requested an Evidentiary Hearing (See DE #64 and 65) in order to ascertain if the all elements of the assessment had been produced – such request was denied without cause. The Petitioner alleges the district court failed to uphold the Constitution as they are sworn to do and protect the fundamental rights to due process as guaranteed by the U.S. Const. amend. V.

This Court has repeatedly affirmed the right to be heard and the right due process. See *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972):

> "The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment -- to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference."

Also see *Matthews v. Eldridge*, 424 US 319, 332-33 (1976) and *Arnstrong v. Monzo*, 380 US 545, 550-52 (1965):

1) Due process requires as general matter opportunity to be heard at meaningful time and in a meaningful manner.
2) Citizens must be afforded due process before deprivation of life, liberty or property.

It appears the Tenth Circuit has contradicted its own ruling of *U.S. v. Deters*, 143 F.3d 577 (10th Cir. 1998) stating:

> "When government action deprives a person of life, liberty or property without fair procedures, it violates procedural due process."

It has been well established in this Court that Certiorari should be granted where a court of appeals decision "appears" to conflict with this Court's precedent. *United States v. Doe* 465 U.S. 605, 610 (1984) "to resolve the apparent conflict between the Court of Appeals holding and the reasoning underling this Court's holding" *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 926 (1982). And where the court of appeals deliberately refuses to follow the applicable Supreme Court decisions *Rodriguez De Quijas v. Sheason/American Express, Inc.*, 490 U.S. 477 (1989).

Sup. Ct. R. 10(c) indicates that among the reasons the Court considers in granting a writ of certiorari is when a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

It appears that *McNabb v. United States*, 318 U.S. 332, 340 (1943) is this Court's first recognition of its supervisory power over lower federal court proceedings. See also *Mallory v. United States*, 354 U.S. 449 (1957); *Elkins v. United States*, 364 U.S. 206 (1960); *Unites States v. Hale*, 422 U.S. 171, 181 (1975); *Hobby v. United States*, 486 U.S. 399 (1984); and *Florida v. Rodriguez*, 469 U.S. 1,7 (1984).

Sup. Ct. R. 10(c) further indicates that among the reasons the Court considers in granting a writ of certiorari is when a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a

course by a lower court, as to call of an exercise of this Court's power of supervision.

It appears that Sup. Ct. R. 10(c) implies a duty of establishing and maintaining "standards of procedure and evidence." In light of what appears to be the District Court's direct refusal to adhere to the accepted and usual course of judicial proceedings, and the Tenth Circuit's failure to conform its decision to this Court's relevant teachings, plenary review is warranted to maintain public confidence in the integrity of the judiciary.

III. The Petitioner alleges the decisions of the District Court, Tenth, First, and Eleventh Circuit Courts have decided an important issue involving the administration of income tax laws, finding the Congressional mandate of Title 5 U.S.C. § 706 invalid, in a way that appears to conflict with this Court's prior holdings.

A. The District Court decision sanction by Tenth Circuit appears to conflict with this Court's prior holdings.

The legislature has directed the Internal Revenue Service to act in a particular manner, set out in specific standards of conduct required for a valid assessment. Despite the instigation of computer generated forms, the statute has not changed requiring the pertinent parts of the "Record of the Assessment" articulated in 26 CFR § 301.6203-1 (2004). The secretary has not changed the regulations from the time when the 23C was considered a valid assessment till the present time.

The Petitioner alleges that no statutory authority was conferred per 26 U.S.C. § 6203 or 26 CFR 301.6203-1 to provide a substitute certificate, abbreviated, or unsigned assessment.

The Petitioner further alleges that no statutory authority was conferred to create a character of the liability, i.e. Form 1040, not identified by U.S. Const. art. I § 8 **Power of Congress.**

This Court has long recognized that the primary rule of statutory construction is to ascertain and give effect to the plain meaning of statutory language. The Petitioner relies on the following mandatory authorities of this Court;

In *Morrill v. Jones,* 106 U.S. 466, 467 (1882) Mr. Chief Justice Waite, after stating the case, delivered the opinion of the court;

> "The Secretary of the Treasury cannot by his regulations alter or amend the revenue law. All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted."

In *Gould v. Gould,* 245 U.S. 151, 153 (1917) this Court held;

> "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen,"

U.S. v. Morton Salt Co., 338 U.S. 632, 644 (1950).

> "The Administrative Procedures Act was framed against the background of rapid expansion of the administrative process was a check upon administrative whose zeal might otherwise have carried them to excesses not contemplated in legislation created their offices. It created safeguards even narrower than the constitutional ones, against arbitrary official encroachment on private rights.
>
> Thus § 3(a) of the Act requires every agency to which it applies, which includes the Federal Trade Commission, to publish in the Federal Register certain statements of its rules, organization and procedure, "including the nature and requirements of all formal or procedures available," and adds that, "No person shall in any manner be required to resort to organization or procedure not so published." In addition § 6(b) proscribes any requirement of a report or other investigative demand "in any manner or for any purpose except as authorized by law."

In *Chevron, U.S.A., Inc v. Natural Resources Defense,* 467 U.S. 837, 842-43 (1984) this Court ruled;

> "When a court reviews an agency's construction of the statue which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." [9]

In *Louisiana Public Service Com'n v. F.C.C.,* 476 U.S. 355, 374-75 (1986) this Court held;

> "Agency may not confer power upon itself. To permit an agency to expand its power in the face of congressional limitation on its jurisdiction would be to grant to the agency power to override Congress. This we are both unwilling and unable to do."

In *Lyng v. Payne,* 106 S.Ct 2333, 2341, 476 U.S. 926, 90 L.Ed 921 (1986) this Court stated;

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[9] The judiciary is the final authority on issues of statutory constructions which are contrary to clear congressional intent. See, e.g., *FEC v. Democratic Senatorial Campaign Committee,* 454 U.S. 27, 32, 102 S.Ct. 38, 42, 70 L.Ed.2d 23 (1981); *SEC v. Sloan,* 436 U.S. 103, 117-118, 98 S.Ct. 1702, 1711-1712, 56 L.Ed.2d 148 (1978); *FMC v. Seatrain Lines, Inc.,* 411 U.S. 726, 745-746, 93 S.Ct. 1773, 1784-1785, 36 L.Ed.2d 620 (1973); *Volkswagen v. FMC,* 390 U.S. 261, 272, 88 S.Ct. 929, 935, 19 L.Ed.2d 1090 (1968); *NLRB v. Brown,* 380 U.S. 278, 291, 85 S.Ct. 980 988, 13 L.Ed.2d 839 (1965); *FTC v. Colgate-Palmolive Co.,* 380 U.S. 374, 385, 85 S.Ct. 637, 643, 90 L.Ed. 904 (1965); *Social Security Board v. Nierotko,* 327 U.S. 358, 369, 66 S.Ct. 637, 643, 90 L.Ed. 718 (1946); *Burnet v. Chicago Portrait Co.,* 285 U.S. 1, 16, 52 S.Ct 275, 281, 76 L.Ed. 587 (1932); *Webster v. Luther,* 163 U.S. 331, 342, 16 S.Ct. 963, 967, 41 L.Ed. 179 (1896). If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect.

> "Second, an agency's power is no greater than that delegated to it by Congress."

Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81, 91 (2002);

> "Regardless of how serious the problem an administrative agency seeks to address, it may not exercise its authority in

The Petitioner alleges that the substitute, abbreviated, and unsigned Form 4340 and RACS-006 conflict with the "arbitrary, capricious, abuse of discretion, otherwise not in accordance with law" or failed to meet statutory, procedural, or constitutional requirements. 5 U.S.C. §§ 706 (2)(A),(C),(D) (1996).

This Court has defined the arbitrary and capricious standard following cases: *FCC V. National Citizens Comm. for Broadcasting,* 436 U.S. 775, 803 (1978) and *Citizens to Preserve Overton, Park v. Volpe*, 401 U.S. 402, 413-414 (1971)

> "But the existence of judicial review is only the start: the standard for review must also be determined. For that we must look to § 706 of the Administrative Procedure Act, 5 U.S.C. § 706 (1964 ed., Supp. V), which provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found" not to meet six separate standards.[30]

B. Intracircuit conflict within the Tenth Circuit Court.

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[30] In all cases agency action must be set aside if the action was "arbitrary, capricious, an abuse of discretion, to otherwise not in accordance with law" or if the action failed to meet statutory, procedural, or constitutional requirements. 5 U.S.C. §§ 706 (2)(A), (B), (C), (D) (1964 ed., Supp. V). In certain narrow, specifically limited situations. The agency action is to be set aside if the action was not supported by "substantial evidence." And in other equally narrow circumstances the reviewing court is to engage in a de novo review of the action and set it aside if it was "unwarranted by the facts." 5 U.S.C.A. §§ 706 (2)(E), (F), (1964 ed., Supp. V)."

The widespread conflict among the circuits is accompanied by intracircuit within the Tenth Circuit Court. The Tenth Circuit decision appears to be a direct departure from its own previous application of this Court's rulings.

Neither Form 4340 nor RACS-006 combined which were presented to the District Court, show a taxable revenue activity or character of liability that pertains to the Petitioner. The character of the tax liability will be the disclosure of an identifiably activity involving customs, duties or excises, identified with U.S. Const. art. I § 8. Yet the Respondent would have the court believe that Form 1040 shown on Form 4330 is the character of the liability.

The Petitioner contends that Form 1040 cannot be the character of the liability when both the Tenth Circuit in a previous ruling and this Court have determined that "tax forms are information collection request" under the *Paperwork Reduction Act, Dole v. United Steel workers*, 494 U.S. 26, 110 S. Ct. 929, 932-33, 108 L. Ed.2d 23 (1990); *United States v. Collins,* 920 F.2d 619, 630 & n. 13 (10th Cir. 1990 (dictum));

> "the 1040 form is the information collection request which arguably must comply with the PRA. It is through the 1040 form that the government obtains all of the tax information it requires,.." *U.S. v. Dawes,* 951 F.2d 1189 (10th Cir. 1991)

It appears there is another Tenth Circuit intracircuit conflict relating to an agency acting in excess of the intent of Congress in *Home Mortg. Bank v. Ryan,* 986 F.2d 372, 376 (10th Cir. 1993) quoting from *Chevron.* supra;

> "If congress has directly spoken to issue addressed by regulation and its intent is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."

It has also been well established in this Court that Certiorari should be granted when the intracircuit conflict relates to a recurring and important issue or is accompanied by a "widespread conflict among the circuits," *Commissioner v. Estate*

of Bosch, 387 U.S. 456, 457 (1967); *John Hancock Ins. Co. v. Bartels,* 308 U.S. 180, 181 (1939); *Dickinson v. Petroleum Conversion Corp.,* 338 U.S. 507, 508 (1950); and *Scarborough v. United States,* 431 U.S. 563, 567 n.4 (1977).

The Petitioner contends that the practice of an administrative agency acting without Congressional authority, threatens to develop a fourth branch of government for which there is no sanction in the Constitution. It has been well established in this Court that Certiorari should be granted to review the exercise of the grave power of annulling an Act of Congress *United States v. Butler,* 297 U.S.1 (1936) and *United States v. Gainey,* 380 U.S. 63,65 (1965).

The Tenth Circuit's failure to conform its judgment to this Court's relevant teachings constitutes a serious deviation from established administrative law. Sup. Ct. R. 10(c) indicates that among the reasons the Court considers in granting a writ of certiorari is when a United States Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

CONCLUSION

For the reasons stated above, the Petitioner respectfully requests Your Honorable Court to grant a Writ of Certiorari as entered.

Respectfully submitted

_____

Laurence Rene', Goodman

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

LAURENCE RENE' GOODMAN,	)	
	)	
Plaintiff-Appellant,	)	No. 05-1440
	)	
v.	)	(D. Colo.)
	)	
UNITED STATES OF AMERICA,	)	(D.C. No. 04-CV-1162-LTB-MJW)
	)	
Defendant-Appellee.	)	

ORDER AND JUDGMENT

Before HENRY, BRISCOE, AND O'BRIEN, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Laurence Rene' Goodman, appearing pro se, appeals the district court's dismissal of his petition for mandamus as moot. The district court concluded that the government had already produced the assessment records relating to Mr. Goodman's unpaid income taxes that Internal Revenue Service was attempting to collect by levy. For the reasons given below, we affirm the district court's dismissal of Mr. Goodman's petition for mandamus as moot.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and condition of 10th Cir. R. 36.3.

I. BACKGROUND

On March 4, 2004, the IRS sent Mr. Goodman a copy of a Notice of Levy to collect unpaid income taxes, penalties, and interest totaling $220,928.33 for 1997 and $145,272.80 for 1998. In a letter to the IRS dated March 23, 2004, Mr. Goodman requested copies of "procedurally proper assessment certificates for the principal of each class of tax assessed," specifically including "the Form 23C Assessment Certificate," "support documents for each assessment certificate," "Form 2162 Notice of Assessment," "Form 3553 Prompt Assessment Billing Assembly," "Form 4907 Notice of Taxpayer Delinquent Account," and "Form 17 notice and demand for payment." He demanded a response "within 20 days from the date the IRS receives this letter." Rec. doc. 1, ex. A at 1-2.

On June 7, 2004, Mr. Goodman filed a "Petition in the Nature of a Writ of Mandamus to Susan Meredith, Agent of the District Director, Internal Revenue Service" in federal district court. *Id.* doc. 1. He said that the IRS had not responded to his March 23, 2004, request for documents and he asked the court to direct Susan Meredith, an IRS employee, to produce a "procedurally correct copy of the document identified as a 'Record of the Assessment' signed by an assessment officer, as required pursuant to Section 6203, Title 26, United States Code." *Id.* at 3.

On August 3, 2004, the United States sent Mr. Goodman Forms 4340, Certificates of Assessment, Payments and other Specified Matters, for 1997 and 1998. *Id.* doc. 14, Exs. 1, 2. Each Form 4340 identified taxpayer, the tax period at issue, the character of the tax – described as "Form 1040," meaning income tax – the amounts assessed, and the date of the assessment.

The district court referred Mr. Goodman's petition to the magistrate judge. The United States filed a motion to dismiss Mr. Goodman's petition as moot. The government acknowledged that, under Section 6203 of the Internal Revenue Code (26 U.S.C.) (I.R.C.), Mr. Goodman was entitled to receive a copy of the assessment records for amounts that the IRS was seeking to collect. The government asserted, however, that Mr. Goodman had been provided with copies of IRS Forms 4340, Certificates of Assessments and Payments, for 1997 and 1998 and that the

petition was therefore moot. Rec. doc. 12, at 3-4. The government attached copies of Mr. Goodman's Forms 4340 to its motion.

Mr. Goodman argued that he was entitled to "summary records" of assessment that he had not yet received. *Id.* doc. 25, at 3. The government then sent Mr. Goodman copies of IRS RACS 006s, which are computer-generated forms that reflect summary information about all of the assessments that the IRS makes on a particular date, and filed a motion to include copies of the RACS 006s in the record. *Id.* at 3, 5 n. 1; docs. 31, 32. Those reports showed the assessment summaries for the dates on which Mr. Goodman's 1997 and 1998 taxes were assessed.

Mr. Goodman moved to strike the Forms 4340 and the RACS 006s from the record. The magistrate judge denied the motions to strike and indicated that he would treat the government's motion to dismiss as a motion for summary judgment, taking into consideration the Forms 4340 and RACS 006s. Mr. Goodman opposed the motion to dismiss, contending that there were material issues of fact in dispute. He also filed a consolidated motion to strike the motion to dismiss and for a continuance to allow him to conduct discovery.

The magistrate judge recommended that the motion to dismiss for mootness, viewed as motion for summary judgment, be granted. The magistrate judge concluded that the government had already produced documents that satisfied the mandates of I.R.C. § 6203 and Treasury Regulations § 301.6203-1 and that Mr. Goodman merely sought to obtain documents in his "preferred format." Rec. doc. 58, at 4-5.

Mr. Goodman filed a motion for a more definite statement, which the magistrate judge denied. Mr. Goodman then filed a motion for recusal or for an evidentiary hearing, in which accused the magistrate judge of "actual bias against [him]." *Id.* doc. 64, at 2 (emphasis in original). The magistrate judge also denied that motion.

The district court adopted the magistrate judge's recommendation with respect to the government's motion to dismiss for mootness, "considered as a Motion for Summary Judgment," and dismissed the action. *Id.* doc. 74, at 2.

II. DISCUSSION

A. Standard of Review

The district court's finding of mootness was embodied in an order granting the defendant's motion for summary judgment. We review de novo a judgment of dismissal for mootness. *Anderson v. U.S. Dep't of Health & Human Servs.*, 3 F.2d 1383, 1384 (10th Cir. 1993). Subject matter jurisdiction is appropriately dealt with by means of a motion to dismiss under Federal Rule of Civil Procedure Rule 12(b)(1) motion, and we will treat the district court's summary judgment ruling as if it were a ruling on a Rule 12(b)(1) motion.

"A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (internal quotation marks omitted). "The core question in a mootness inquiry is whether granting a present determination of the issues offered. . . will have some effect in the real world." *Kennecott Utah Copper Corp. v. Becker,* 186 F.3d 1261, 1266 (10th Cir. 1999) (internal quotation marks omitted) (omission in original).

To be entitled to mandamus relief, Mr. Goodman must show (1) a clear right to relief, (2) a "plainly defined and peremptory" responsibility of the respondent to perform the act in question, and (3) the absence of any other adequate remedy. *Rios v. Ziglar,* 398 F.3d 1201, 1206 (10th Cir. 2005). Because Mr. Goodman is representing himself on appeal, his pleadings will be liberally construed. See *Haines v. Kerner,* 404 U.S. 519, 520-21 (1972). We agree with the district court that Mr. Goodman cannot make these showing, and that he received all information to which he is entitled.

B. Section 6203 of the Internal Revenue Code

Section 6203 of the Internal Revenue Code provides that an assessment of tax "shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary." Treasury Regulation § 301.6203-1 amplifies this rule by stating that an assessment is made "by an assessment officer signing the summary record of assessment," which shall include the "identification of the

taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment."

Section 6203 also provides that "a copy of the record of assessment" must be furnished to the taxpayer upon request. Treasury Regulation § 301.6203-1 specifies that "[i]f the taxpayer requests a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed."

No particular form or document is needed to satisfy the requirements of I.R.C. § 6203 and Treasury Regulation § 301.6203-1. Instead, an assessment record is sufficient if it provides the taxpayer with the required information. *See, e.g., Taylor v. IRS*, 69 F.3d 411, 419 (10th Cir. 1995) (noting that Forms 4340 provide "all of the information required under Treasury Regulation § 301.6203-1"); *Koff v. United States*, 3 F.3d 1297, 1298 (9th Cir. 1993); *Gentry v. United States*, 962 F.2d 555, 558 (6th Cir. 1992); *United States v. Chila*, 871 F. 2d 1015, 1017 (11th Cir. 1989).

Until its transition to computerized recordkeeping, the IRS generally used Form 23C for the summary record of assessment known as the RACS 006. Both forms have been recognized as summary records of assessment within the meaning of I.R.C. § 6203 by this court. *March v. IRS*, 335 F.3d 1186, 1188 (10th Cir. 2003); *see also Roberts v. Comm'r*, 329 F.3d 1224, 1228 (11th Cir. 2003).

IRS Form 4340, Certificate of Assessments and Payments, also has been deemed to satisfy the requirements of I.R.C. § 6203 and Treasury Regulation § 301.6203-1. This court and others have held that Form 4340 provides "all of the information required under Treasury Regulation § 301.6203-1," because it identifies the taxpayer, informs him of the character of the liability assessed, the tax periods given rise to the assessments, and the amount of the assessment. *Taylor*, 69 F.3d at 419; *see also March*, 335 F.3d at 1188; *Guthrie v. Sawyer*, 970 F.2d 733, 737 (10th Cir. 1992). According to the government, the District IRS Form 4340 is an official document that is derived from coded information in a taxpayer's tax account, including Forms 1040 and related documents. See *United States v. Buford*, 899 F.2d 1406 (5th Cir. 1989).

C. Section 6203 as Applied to Mr. Goodman

We have recognized that the RACS 006 is a summary record of assessment "[l]ike Form 23C, but that it is instead "generated on a computer." *March,* 335 F.3d at 1188. The court has held that RACS oo6 "satisfies the signature and certification requirements of 26 C.F.R. § 301.6203-1." *Id.* at 1188-89.

We agree with the government that Mr. Goodman's "right to relief" has already been honored, and the government has not further "responsibility" to Mr. Goodman is this regard. *See Rios,* 398 F.3d 1201, 1206 (10th Cir. 2005). The United States provided him with two sets of documents reflecting the assessments of his 1997 and 1998 taxes, first the Forms 4340 and then the RACS 006s. Despite Mr. Goodman's continuing protests, he has now received all of the information to which he is entitled under I.R.C. § 6203 and Treasury Regulation § 301.6203-1. The district court was correct in upholding, after a de novo review of the record, the magistrate judge's recommendation for dismissal of Mr. Goodman's petition as moot.

III. CONCLUSION

Accordingly, we AFFIRM the district court's order and DISMISS Mr. Goodman's appeal as MOOT.

Entered for the Court,

Robert H. Henry
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 04-cv-01162-LTB-MJW

LAURENCE RENE' GOODMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

**RECOMMENDATION REGARDING
UNITED STATES OF AMERICA'S MOTION TO DISMISS
FOR MOOTNESS
(DOCKET NO. 12)
AND
ORDER REGARDING
UNITED STATES OF AMERICA'S MOTION TO
ALTER/AMEND CAPTION AND CERTIFICATE OF
COMPLIANCE WITH D.C.COLO.LCIVR. 7.1
(DOCKET NO. 55)**

Entered by Magistrate Judge Michael J. Watanabe

This case is before this court pursuant to a General Order of Reference issued by Chief Judge Lewis T. Babcock on June 8, 2004, (Docket No. 2). The court has reviewed the motions, responses and replies. In addition, the court has taken judicial notice of the court's file and has considered applicable Federal Rules of Civil Procedure and case law. The court now being fully informed makes the following recommendation and order.

Allegations in the Petition

Petitioner seeks mandamus relief in his "Petition in the Nature of a Writ of Mandamus to Susan Meredith, Agent of the District Director, Internal Revenue Service" ("Petition"), filed on June 7, 2004 (Docket No. 1). He requests that the United States of America provide him with a copy of his record of assessment, pursuant to 26 U.S.C. § 6203. Petitioner attaches a Notice of Levy regarding his federal income tax liability for tax years 1997 and 1998 as Exhibit B to his Petition.[1]

United States of America's Motion to Dismiss Considered as a Motion for Summary Judgment

Respondent United States of America moves the court to dismiss it from the case pursuant to Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction. In its Motion to Dismiss, filed on August 4, 2004 (Docket No. 12). Respondent United States of America argues that this matter is moot because the United States of America has already provided the Petitioner with the responsive Form(s) 4340 that he is seeking. (See Def's Motion to Dismiss, at 2).

As relayed in its earlier order (Docket No. 45), since this court is allowing the summary records of assessment and taking the same into consideration in connection with the United States of America's Motion to Dismiss for MOOTNESS (Docket No. 12), this court will therefore consider the Respondent United States of America's Motion to Dismiss for MOOTNESS (Docket No. 12 as a motion for summary judgment.

Discussion

Summary judgment is appropriate "if the pleadings, deposition, answers to interrogatories, and admission on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving part is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). I applying this standard, we examine the factual record and draw reasonable

[1] The Petition fails to specify the particular tax or type of tax for the record of assessment.

inferences therefrom in a light most favorable to the nonmoving party. Burlington v. United Air Lines, Inc., 186 F.3d 1301, 1313 (10th Cir. 1999). Judgment as a matter of law is appropriate when there is no legally sufficient evidentiary basis for a reasonable jury how the to find for the nonmoving party. Fed.R.Civ.R. 50(a).

The moving party shoulders "the initial burden to show that there is an absence of evidence to support the nonmoving party's case." Thomas v. IBM, 48 F.3d 478, 484 (10th Cir. 1995). If the moving party meets this burden, it falls to plaintiff to "identify specific facts that show the existence of a genuine issue of material fact." Id. "The party opposing the motion must present sufficient evidence in specific, factual form for a jury to return a verdict in that party's favor." Id.

Material facts ore facts that might affect the outcome of the suit; the court determines materiality by reference to the substantive law at issue in the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Disputes over irrelevant or unnecessary facts should not be considered. Id. If, given the evidence submitted, a reasonable jury could hold for the nonmoving party, the dispute over material facts is "genuine." Id. Where there is a complete failure of proof on an essential element of the case for the nonmoving party, all other facts become immaterial, and the moving party is entitled to judgment as a patter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

PETITION IS MOOT

The Mandamus Act, 28 U.S.C. § 1361 states as follows, "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States of America or any agency thereof to perform a duty owed to the plaintiff." Three jurisdictional elements must manifest themselves before manifest themselves before mandamus can issue: (1) the plaintiff must have a clear right to the relief; (2) the defendant must have a clear duty to act; and (3) no other adequate remedy must be available. Jones v. Alexander, 609 F.2d 778, 781 (5th Cir. 1980).

Here, the court does not have to determine whether the Petitioner has satisfied any of these elements, because the Petition

is moot. Subsequent to the filing of the Petition, the Respondent has fully acknowledged Petitioner's right to the record of assessment regarding his federal tax liability, and to have copies made available to him, pursuant to 26 U.S.C. 6203 and Treas. Reg. § 301.6203-1. In fact, the Respondent sent the original Forms 4340, and the Certificates of Assessments and Payments for Petitioner's 1997 and 1998 federal income tax liabilities, to the Petitioner via overnight delivery on August 3, 2004. This was reported in Respondent's Motion to Dismiss, and supported by the First and Second Declarations of U.S. Department of Justice, Tax Division Attorney, Anita Machhar, and the Certificate of Service. (See Def's Motion to Dismiss, a 4 Decl. Of Anita Machhar; Second Decl. Of Anita Machhar).

Despite receiving the requested documents, Petitioner is now complaining that the documentation provided is deficient because they were not produced in Petitioner's preferred format. Petitioner, in his "Petitioner's Amended Motion in Opposition to Respondent's Motion to Dismiss for MOOTNESS," which the court construes as his Response to Respondent's Motion to Dismiss, still argues that the Form 4340 provided by Respondent is insufficient, because it does not meet all the regulatory requirements of 26 C.F.R. § 301.6203-1. (Petitioner's Resp. to Respondent's Motion to Dismiss, at 3-6). But, as discussed below, Petitioner's claim is unsupported.

Internal Revenue Code § 6203 provides: "The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment." 26 § U.S.C. 6203. The Treasury Regulation implementing 26 U.S.C. § 6203 states that the summary record of assessment shall, through supporting records, "provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment." 26 C.F.R. § 301.6203-1. The regulation further provides that if the taxpayer requests a copy of the record of assessment, "her shall be furnished a copy of the pertinent parts of the assessment which set forth the name of taxpayer, the date of

assessment, character of the liability assessed, the taxable period, if applicable, and the amounts assessed." Id.

Upon review of the documents provided by the Respondent, and considering that the Petitioner did receive them in the mail, the court finds that all of the requirements of 26 C.F.R. § 301.6203-1 have been met. The produced documents do contain the name of the taxpayer, the date if the assessment, the character of the liability assessed, the taxable period, the amounts assessed, and the signatures of the assessment officer and accounting technician. As such, and when considered along with the Declaration of the Tax Division Attorney, Anita Machhar, and the Certificate(s) of Official Record signed by the Internal Revenue Service Supervisor, Charmian Setear, the record demonstrates th the Respondent has provided Petitioner with all documents responsive to his request. (Docket No. 14). Therefore, because Respondent has already furnished Petitioner with his requested records, Petitioner's claim is moot. Crooker v. U.S. State Department, 628 F.2d 9, 10 (D.C. Cir. 1980)("Once the records are produced the substance of the controversy disappears and becomes moot since the disclosure which the suit seeks has already been made."); Continental Oil Co. v. State Bd. Of Equalization, 494 P.2d 545, 649 (Okl. 1972)(finding it unnecessary to issue a writ of mandamus when Respondent will proceed with reasonable dispatch). Accordingly, the court concludes that the Respondent is entitled to summary judgment in this matter.

United States of America's Motion to Alter/Amend Caption and Certificate of Compliance with D.C. Colo. LCivR. 7.1

The Respondent moves the court to alter of amend the caption in order to conform with the information contained in the docket in this matter. (Docked No. 55). From the time this matter was initiated, Petitioner had always named Susan Meredith and/or other employees of the Internal Revenue Service in their official capacity, the proper Respondent, is the United States of America, and No Ms. Meredith. Since it is clear to the court that the United States of America, and not Ms. Meredith, is ht proper party Respondent, the caption should be changed accordingly to reflect this fact.

WHEREFORE, for the foregoing reasons, it is hereby

RECOMMENDED that United States of America's Motion to Dismiss for MOOTNESS, considered as a Motion for Summary Judgment, filed on August 4, 2004 (Docket No. 12), and this action be dismissed.

FURTHER ORDERED that United States of America's Motion to Alter/Amend Caption and Certificate of Compliance with D.C.Colo.L.CivR. 7.1, filed on February 8, 2005 (Docket No. 55), is GRANTED.

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the parties have ten (10) days after service of this recommendation to serve and file written, specific objections to the above recommendation with the District judge assigned to the case. The District Judge need not consider frivolous, conclusive, or general objections. A party's failure to file and serve such written, specific objections waives de novo review of the recommendation by the District judge, Fed. R. Civ. P. 72(b), Thomas v. Arn, 474 U.S. 140 148-53 (1985), and also waives appellate review of both factual and legal questions. Makin v. Colorado Dep't of Corrections, 183 F.3d 1210 (10th Cir. 1999); Talley v. Hesse, 91 F.3d 1411, 1412-13 (10th Cir. 1996).

Dated: February 22, 2005
Denver, Colorado

Michael J. Watanabe
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Laurence Rene', Goodman	)	
	)	
Petitioner	)	Judge: Lewis T. Babcock
	)	
v.	)	Case: 04-B-1162 (MJW)
	)	
Susan Meredith	)	
	)	
Respondent	)	
	)	
	)	

NOTICE OF APPEAL

Notice is hereby given that Laurence Rene', Goodman, Petitioner in the above named case, hereby appeal to the United States Court of Appeals for the Tenth Circuit from the final judgment entered in this action on the 4th day of August, 2005.

Respectfully Submitted

_____

Laurence Rene', Goodman

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

LAURENCE RENE' GOODMAN,	)	
	)	
Plaintiff-Appellant,	)	No. 05-1440
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant-Appellee.	)	

ORDER

Filed August 14, 2006

Before HENRY, BRISCOE, AND O'BRIEN, Circuit Judges

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Further, appellant's motion to stay is denied.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

by:
Deputy Clerk